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## RECENT CASES

ACTION—CAUSES OF ACTION—PAYMENT BY INSTALLMENTS.—PUCKETT v. NATIONAL ANNUITY ASS'N, 114 S. W. 1039 (Mo.).—*Held*, that a single default in the payment of an installment due under a contract calling for periodic payments does not constitute a repudiation of the contract so as to empower the creditor to sue for payments falling due in the future.

It is well settled that an action is maintainable to recover an installment due on a note payable by installments, some of which are not due. *Basler v. Nichols*, 8 Ind. 260; *Tucker v. Randall*, 2 Mass. 283. And such failure to pay an installment, although a breach of the contract, is ground for recovery only on those unpaid installments due or past due at the time suit is brought. *Thomas v. Richards*, 124 Ga. 942. It has been held, however, that if a person is bound by a bond with a penalty conditioned to be discharged by the payment of several sums at different times, a suit will lie immediately after the time fixed for the payment of any one installment has elapsed, although the other sums may not be due. *Cocke v. Stewart*, 2 Overt. (Tenn.) 231.

CONTRACTS—FAILURE TO PERFORM—EFFECT.—McCORMICK v. TAPPENDORF, 99 PAC. 2 (Wash.).—*Held*, that where a party to a contract indicates that he cannot or will not perform, the other party will not be bound by the contract. Mount, J., *dissenting*.

The general rule is that where one of the parties to a contract declares that he will not perform his part, or so acts as to make it impossible for him to do so, he thereby releases the other from the contract and its obligations. *Wolf v. Marsh*, 54 Cal. 228; *Miller v. Ward*, 2 Conn. 494. It has also been held that one who has violated his obligations under a contract is in no position either to compel the other party to fulfill his duties, or to complain because the latter is unwilling to do so. *Shaeffer v. Blair*, 149 U. S. 248; *Pittsburgh Bessemer Steel Rail Co. v. Hinckley*, 17 Fed. 584. But a mere declaration made by one bound to perform a future act, before the time for doing it, that he will not do it, is of itself no breach of contract. *McPherson v. Walker*, 40 Ill. 371. However, if this declaration is not withdrawn when the time arrives for the act to be done, it is a sufficient excuse for the default of the other party. *Carstens v. McDonald*, 38 Neb. 858.

CONTRACT—PARTIAL PERFORMANCE—RIGHT OF RECOVERY.—MOORE ET AL. v. BOARD OF REGENTS, 115 S. W. 6 (Mo.).—*Held*, that a contractor who only partially performs his contract is entitled to recover a reasonable value of work done, and materials furnished not exceeding the contract price, and deducting any damages suffered by the owner.

It is generally held that the contractor may recover for partial performance where complete performance is prevented by the act of God